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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/043,693	01/10/2002	Robert K. Barrett	7228-1	7706

22442 7590 10/01/2003

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EXAMINER

HARTMANN, GARY S

ART UNIT	PAPER NUMBER
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3671

DATE MAILED: 10/01/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/043,693

Applicant(s)

BARRETT ET AL.

Examiner

Gary Hartmann

Art Unit

3671

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 28 July 2003.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1,4,6-20 and 24-28 is/are pending in the application.
- 4a) Of the above claim(s) 24-28 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 11-20 is/are allowed.
- 6) ☒ Claim(s) 1,4 and 6-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 1/10/2 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Newly submitted claims 24-28 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: the newly submitted independent claims each present subcombinations of the originally presented combination; the subcombinations presenting specific structural characteristics not required by the combination claims.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 24-28 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1, 6 and 8-10 are rejected under 35 U.S.C. 102(b) as being anticipated by Vidal (U.S. Patent 3,981,038) in view of Niswander et al. (U.S. Patent 4,564,313). Vidal discloses an abutment having a facing wall, sill, and lateral containment walls connected to and extending perpendicularly from the sill (see Figure 1). Vidal does not teach the lateral containment elements. Niswander et al. teaches lateral containment elements (28) attached to a bridge abutment. It would have been obvious to one of ordinary skill in the art at the time the invention

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was made to have used the lateral containment elements of Niswander et al. with the abutment of Vidal in order to, for example, direct water along the water course and under the bridge, as taught by Niswander et al.

Vidal does not teach the piles; however, it is well known to use piles for erosion control. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have used piles spaced from a face of the abutment in order to further direct water along the water course, in accordance with the teaching of Niswander et al.

There is a bearing member (12) resting on the sill.

The sill meets the recitations of reinforced concrete.

4. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over either Vidal and Niswander et al. as applied above, and further in view of Geisel (U.S. Patent 571,225). Vidal is silent regarding piles. Geisel teaches using piles (11, 12) extending into and below a concrete abutment in order to secure the abutment. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have used the piles of Geisel with Vidal for this purpose.

5. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Vidal and Niswander et al. as applied above, and further in view of Vidal (U.S. Patent 4,564,967). Vidal '038 does not teach the pile. Vidal '967 teaches piles (2) connected to a portion of a facing wall and extending from above ground to below a sill (Figure 1, for example). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have used this configuration with Vidal '038 in order to obtain a desired amount of structural stability, as is standard design practice.

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*Allowable Subject Matter*

6. Claims 11-20 are allowed.

*Response to Arguments*

7. Applicant's arguments filed 7/28/3 have been considered but are moot in view of the new grounds of rejection.


*Conclusion*

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gary Hartmann whose telephone number is 703-305-4549. The examiner can normally be reached on Monday through Friday, 9am-6pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas Will can be reached on 703-308-3870. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3597 for regular communications and 703-305-3597 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.

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**Gary Hartmann**  
**Primary Examiner**  
**Art Unit 3671**